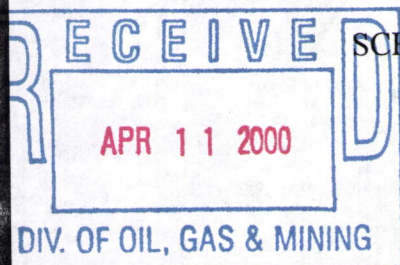


m/35/012



THE STATE OF UTAH  
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

FUND: Reservoirs

MATERIALS PERMIT NO. ML 48329-OBA  
PERMIT FOR REMOVAL OF LIMESTONE ROCK

This Permit is entered this first day of September 1, 1999 (the "Effective Date"), by and between the Utah School and Institutional Trust Lands Administration, 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 ("Permitter"), and Harper Contracting, Inc. P.O. Box 18400, Kearns, Utah 84118 ("Permittee").

In consideration of the payments to be made by Permittee, and Permittee's additional covenants herein, Permitter hereby grants Permittee the right to mine and remove certain limestone rock from the Permitted Lands (as defined below) on the following terms and conditions:

1. **Grant of Right to Mine and Remove Limestone Rock.** Permitter hereby grants Permittee the right to mine, remove and sell limestone resources (hereinafter "material") from the mineral estate of the following lands situated in Salt Lake County, State of Utah:

Township 1 South, Range 2 East, SLB&M  
Section 18: Lots 5 and 6

Containing 20.15 acres, more or less (the "Permitted Lands").

2. **Term.** This Permit shall remain in effect, unless sooner terminated as herein provided, for a term of fifty (50) years beginning on the Effective Date and expiring on August 31, 2049. Permittee's obligations for reclamation and indemnification pursuant to the terms of this permit shall survive the expiration or termination of the Permit.
3. **Rent.** No rental payments are required under this Permit.
4. **Surface Estate.** Permittee hereby acknowledges that Permitter does not own the surface estate of the Permitted Lands and any rights granted pursuant to this Permit are expressly limited to the mineral estate. Permittee shall execute a surface use agreement with the owner of the surface estate of the Permitted Lands and provide Permitter a copy of such agreement before commencement of any mining activities on the Permitted Lands.
5. **Advance Minimum Royalty.** During the term of this Permit, Permittee shall pay Permitter a royalty on a minimum of 500,000 bank cubic yards ("BCYs") of material, to be paid in annual advanced minimum royalty payments due January 1st of each year on 10,000 BCYs of material. Such advanced minimum royalty shall be calculated based upon \$0.19 per BCY ("Base Minimum Royalty"), unless the Base Minimum Royalty is



increased as a result of readjustment pursuant to Paragraph 5(a). In the event Permittee mines in excess of 10,000 BCYs of material during such one year period, Permittee shall pay Permitter a production royalty as established in Paragraph 6 on such excess material. The material mined in excess of the annual minimum may be credited towards future advance minimum payments in subsequent years.

(a) Readjustment. The advance minimum royalty payment to be made each year shall be readjusted each year based upon the most recent annual Consumer Price Index-Urban-West Region, Commodities, Durables (CPI) as published by the Bureau of Labor Statistics (the "Index"). In the event the Index ceases to be published, readjustment of the advance minimum royalty shall be based upon an index mutually agreed upon by the parties. In no event shall the advance minimum royalty be decreased as a result of readjustment (escalation only). Readjustment shall occur January 1<sup>st</sup> of each year of the term of the Permit. Readjustment shall be based upon the following formula:

[most recently published CPI less CPI base period divided by [CPI base period] multiplied by 100].

The maximum increase for any single permit year shall be 6.5 percent (6.5 %/year).

(b) Advance Payment. Permitter hereby acknowledges receipt of payment in the amount of \$20,900 paid by Permittee, representing the advanced minimum royalty payment on 110,000 BCYs of material for the first eleven (11) years of this Permit. Permittee hereby agrees that prepayment of the advanced minimum royalty for the first eleven (11) years of this Permit does not prohibit Permitter from readjusting the Base Minimum Royalty at Permit year twelve (12) to reflect any readjustments that would have occurred during Permit years two through eleven (2-11) pursuant to Paragraph 5(a).

6. Production Royalty. Permittee agrees to pay Permitter production royalty, payable annually, equal to five per cent (5%) of the gross sale's price(s) or \$0.19 per BCY, whichever is greater, for each sale of material produced from the Permitted Lands ("Production Royalty"). Gross sale's price(s) is determined at the first point of sale pursuant to bona fide arms-length contract(s).

(a) Readjustment. Readjustment of the Production Royalty shall occur annually and be based upon the criteria and formula set forth in Paragraph 5(a).

(b) Survey. The volume of material mined shall be determined annually by survey by Permitter, with the results of such survey subject to review and acceptance by Permittee.

7. Mineral Lease No. 45599. Permittee shall execute an agreement with Rock and Roll



Land Company whereby Rock and Roll Land Company agrees to relinquish Mineral Lease No. 45599 and to execute and acknowledge any documents reasonably necessary to effect notice of such relinquishment of record. Permittee shall provide Permitter a copy of said agreement before commencement of any mining activities upon the Permitted Lands.

8. **Remittance of Royalties.** No later than thirty (30) days following the end of each calendar year, Permittee shall submit a certified royalty report form to Permitter accurately stating the amount of material produced during the previous calendar year, the sales price of such material, and minimum production and royalty calculations, together with full payment for all production royalties due, if any, for the preceding year.
9. **Records; Inspection.** Permittee shall maintain accurate records as to dates, quantities, and measurements of excavation occurring on the Permitted Lands, and all sales and transfers of material, and shall allow Permitter to freely examine such records upon request at any time. Permitter, its officers, agents and designees shall have the further right at all reasonable times to enter the Permitted Lands to inspect the lands and Permittee's operations thereon.
10. **Limitations on Right to Remove Material; Non-Interference.** Permittee acknowledges that this Permit is for removal of limestone rock as described in Paragraph 1. Permittee may reserve certain waste rock piles on the Permitted Lands for use in reclamation of mined land disturbances on the Permitted Lands.
11. **No Warranty of Title.** It is understood this permit is issued only under such title as Permitter may have, and that Permitter does not warrant its title. In case of title failure, Permittee shall not be entitled to any claim for refund of rental or royalty payments made to Permitter.
12. **Stockpiling.** Stockpiling of extracted material is only allowed within existing disturbed areas and all stockpiled material shall be removed from the Permitted Lands no later than the expiration date.
13. **Reclamation.** Permittee agrees to perform such reclamation measures as may be required by Permitter and/or the Utah Division of Oil, Gas & Mining ("UDOGM") to stabilize and restore natural surface conditions. Such reclamation measures will generally consist of, but not necessarily be limited to, contouring of slopes, replacement of natural topsoil, reseeding as required by Permitter, removal of all trash and debris, and removal of all equipment owned by the Permittee or Permittee's agents. Permittee shall not remove material from the Permitted Lands that are necessary for recontouring or other reclamation measures.



14. **Conduct.** Permittee shall take reasonable precautions to protect, in place, all public land survey monuments and private property corners. Permittee shall conduct all operations under this permit in a lawful, prudent, and good workmanlike manner, shall avoid unnecessary damage and injury to the surface or underlying mineral estate, and shall not commit damage to or waste of other natural resources not covered by this permit.
15. **Plan of Operations.** Prior to commencing operations on the Permitted Lands, Permittee shall notify Permitter in writing, and shall submit a proposed plan of operations and reclamation to Permitter and UDOGM. In addition to any requirements that may be imposed by UDOGM, the proposed plan of operations shall specifically address the specific lands to be disturbed, plans for mining and reclamation of those lands, and coordination of Permittee's operations and reclamation with existing mining activity on the Permitted Lands. Permittee may not commence operations on the Permitted Lands until it has received approval from Permitter of its plan of operations, and obtained all necessary approvals from UDOGM and any other applicable regulatory agencies.
16. **Antiquities.** It is hereby understood and agreed that all treasure trove and all articles of antiquity in or upon the subject lands are and shall remain the property of the state of Utah. Permittee shall report any discovery of a "site" or "specimen" to the Division of State History in compliance with the provisions of Section 9-8-305, Utah Code Annotated (1953), as amended, and to Permitter.
17. **Indemnity.** Permittee shall be responsible for all damages and claims incurred in connection with the activities conducted by it on or about the Permitted Lands. Accordingly, Permittee agrees to indemnify, defend and hold the School and Institutional Trust Lands Administration harmless from any and all claims, suits, damages, losses, expenses, costs and liabilities (including interest, penalties and attorneys fees) arising out of or in any way related to the use of the Permitted Lands by Permittee, its servants, employees, contractors, agents, sublessees, assignees, or invitees, including but not limited to claims for personal injury, death, property damage or environmental damage or claims associated with any noncompliance with environmental law of any character, and including without limitation any such injuries or damages caused in part by the negligence of the School and Institutional Trust Lands Administration or its officers or employees, and regardless of whether liability without fault is sought to be imposed upon the School and Institutional Trust Lands Administration, except to the extent that such injury or damage was caused by the sole negligence or willful misconduct of the School and Institutional Trust Lands Administration or its officers or employees.
18. **Inspection by Permittee; As-Is Condition.** Permittee acknowledges that it has been afforded an opportunity to inspect the Permitted Lands for condition and suitability for its intended use. Permittee hereby accepts the Permitted Lands in their existing, as-is



condition, subject to all existing hazards to person or property, whether natural or manmade. Based on such acknowledgment and acceptance and in consideration for the grant of this Permit, Permittee does hereby release and forever discharge the School and Institutional Trust Lands Administration, and its officers and employees, from any and all liability, claims, damages, causes of action or expenses for any bodily injury, death or property damage which is suffered by Permittee, its officers and employees, or which occurs in connection with Permittee's use of the Permitted Lands.

19. **Insurance.** At his sole cost and expense, Permittee shall at all times during the term of the Permit maintain in force an insurance policy or policies which names the State and Permittee as insured, insuring against all liability resulting from injury or death occurring to persons on or about the Subject Lands, with limits for each occurrence of not less than \$1,000,000, combined single limit, with respect to personal injury, death and property damage. Permittee shall also maintain and keep in force employees' compensation insurance on his employees, if any, to the extent required under the applicable workmen's compensation laws of the State of Utah.
  - (a) All such insurance must name the State of Utah as a co-insured and provide for specific coverage of the Permittee's assumed obligation to indemnify the State of Utah.
  - (b) The Permittee must maintain a current authenticated certificate of insurance on file with the issuing office of this permit. Failure to do so is cause for suspension and termination of the permit.
  - (c) The policy shall stipulate that the Permitter shall be notified thirty (30) days in advance of the termination or modification of the policy. The name of the insured on the insurance policy must be the same as the name of the permit.
20. **Taxes.** In the event that any governmental entity raises any claim regarding payment of sales tax or any other tax by the Permitter on account of material removed pursuant to this permit, Permittee agrees to indemnify and hold the Permitter harmless against the same. In any such event, the Permittee shall pay any such sales or other tax upon demand.
21. **Legal Compliance.** Permittee shall comply with all applicable County, State and Federal laws and regulations, whether now existing or hereafter enacted or promulgated, which pertain in any regard to Permittee's activities to be conducted upon the Permitted Lands, including without limitation applicable safety, health, and environmental protection measures.
22. **Default; Termination.** An Event of Default shall occur if Permittee (a) fails to provide any insurance coverage as required by this Permit, within ten (10) days of written request

by the State; (b) fails to make any payment or perform any other obligation imposed by this Permit; or (c) otherwise violates any provision of this Permit. Immediately upon notice by the Permittee that any Event of Default has occurred, Permittee shall undertake to cure such default fully, and shall notify the Permittee of such cure. If an Event of Default shall have happened and Permittee has not fully cured such default within thirty (30) days after written notice from the Permittee, the Permittee may immediately terminate this Permit. Upon termination for default, Permittee may retain any prepaid minimum advanced royalties. Nothing in this paragraph shall preclude Permittee from pursuing damages, injunctive relief, or any other remedy in law or equity in addition to termination upon default by Permittee.

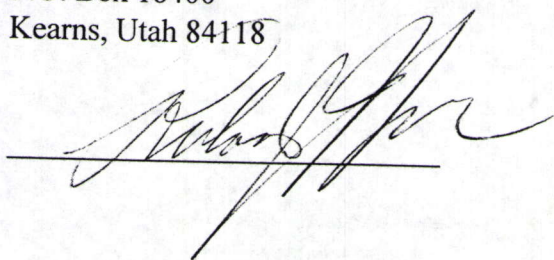
23. **Bonding.** Permittee may require Permittee to post a bond in a form and amount reasonably acceptable to Permittee to secure Permittee's financial and reclamation obligations under this permit. This bond may be in addition to any reclamation bond required by UDOGM. Permittee reserves the right to increase the amount of any such bond if, in its reasonable discretion, such increase is necessary to protect the interests of the State.
24. **Reserved Rights.** Permittee reserves the right to issue new surface and mineral agreements on the Permitted Lands; provided, however, that such agreements shall not unreasonably interfere with Permittee's right to remove material pursuant to this Permit. Permittee further reserves the right to sell or exchange the Permitted Lands, subject to this permit.
25. **Assignment.** Permittee shall not assign or sublease this permit, or any rights or privileges herein, without the prior written consent of Permittee. Any assignment or sublease issued without such consent shall be void ab initio.
26. **No Waiver.** No waiver of the breach of any provision of this permit shall be construed as waiver of any preceding or succeeding breach of the same or any other provision of this permit.
27. **Entire Agreement.** This permit reflects the entire agreement between the parties with respect to the subject matter hereof



IN WITNESS WHEREOF, the parties have executed this permit as of the date herein above first written.


PERMITTEE:

Harper Contracting, Inc.  
P.O. Box 18400  
Kearns, Utah 84118

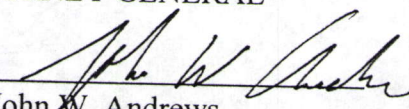


PERMITTER:

State of Utah School and Institutional  
Trust Lands Administration  
675 East 500 South Suite 500  
Salt Lake City, Utah 84102

By:   
Its: Assistant Director/Minerals

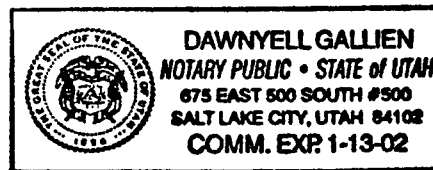
APPROVED AS TO FORM:  
JAN GRAHAM  
ATTORNEY GENERAL

BY:   
John W. Andrews  
Special Assistant Attorney General

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE    )

On the 6th day of December, 1999, personally appeared before me Thomas B. Faddies, who, being duly sworn, stated that he is Assistant Director of Minerals for the Utah School and Institutional Trust Lands Administration, and acknowledged to me that this instrument was signed by him with authority on behalf of said agency.

Dawnyell Gallien  
My commission expires: 1-13-2000 Notary Public, residing at: SLC, UT



STATE OF UTAH                    )  
  : ss.  
COUNTY OF                        )

On the 29 day of November, 1999, personally appeared before me Rulon J Harper, who, being duly sworn that he is Pres for Harper contracting Inc. and , acknowledged to me that this instrument was signed by him.

Sandra L Calder  
My commission expires: 1-20-2002 Notary Public, residing at:

